

APPLICANT:
Jon P. and Mary Pat Koscher

REQUEST:
A variance to permit a portion of an accessory use swimming pool to be located within a recorded easement area.

HEARING DATE: November 5, 2003

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5375

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Jon P. and Mary Pat Koscher

LOCATION: 2236 Gelding Way (Hunter's Run subdivision), Bel Air
Tax Map 56 / Grid 2E / Parcel 581 / Lot 28
First Election District

ZONING: R2 / Urban Residential District

REQUEST: Variance to Section 267-26C(6), of the Harford County Code, to allow a portion of an accessory use swimming pool to be located within a recorded easement area.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants applied for and were granted a permit to construct an in-ground swimming pool in their rear yard. During construction, the pool was slightly mis-located, resulting in a portion of the pool located within the drainage and utility easement.

The Applicant, Jon P. Koscher, testified the property is encumbered by two utility easements -- a condition which is unique to the subject property.

Brian Barco, a neighbor, testified that he was not opposed to the variance, but he was concerned by the unfinished appearance of the Koscher's pool and yard, and requested that the property be seeded and landscaped as quickly as possible.

The Applicant, Mr. Koscher, responded that he would act to immediately complete and landscape the pool and surrounding area. He was aware the pool would possibly have to be removed if Harford County elected to do construction work within the drainage and utility easement.

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The Harford County Department of Planning and Zoning recommends approval, subject to conditions.

APPLICABLE LAW:

The Applicants are requesting a variance, pursuant to Section 267-11 of the Harford County Code, to the requirements of Section 267-26C(6) which reads:

“No accessory use, or structure, except fences, shall be located within a recorded easement area..”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is unique in that it is encumbered by two drainage and utility easements. Those easements cause the Applicants an unreasonable hardship in that they would be forced to remove a portion of their swimming pool which was mis-located by the Applicants' contractor. There would be no impact on any adjoining property or to the purposes of the Harford County Code if the variance were granted.

CONCLUSION:

The variance as requested is hereby approved, subject to the following conditions:

1. An Acknowledgment and Release shall be prepared by the Applicants, to be approved by the Harford County Department of Law, by which the Applicants will acknowledge that Harford County, its agents or assigns, would have no liability in the event Harford County is required to repair, remove or replace improvements within the drainage and utility easement now impacted by the Applicants' pool. The document must further contain Applicants' Waiver for themselves and their successors and assigns of any right to bring an action against the County as a result of such activities.
2. No further encumbrance shall occur within any drainage or utility easement on this property.

Date: November 26, 2003

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner